IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1192 of 1984

Hon'ble MR.JUSTICE S.D.DAVE

and

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

AMRA FULA GORILA

Appearance:

MR KC SHAH PUBLIC PROSECUTOR for Appellant

MR KG SHETH for Respondent

CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

Date of decision: 15/07/97

ORAL JUDGEMENT (Per S.D. Dave J.)

1. The respondent accused came to be tried in Sessions Case No.2/84 by the learned Additional Sessions

Judge, Banaskantha at Palanpur. Ultimately on the appreciation of the evidence on record he came to be acquitted for the offence punishable under section 302 IPC, but however came to be convicted for the offence punishable under section 304, Part I IPC and came to be sentenced to R.I. for four years and to a fine of Rs.50/in default to a further S.I. for one month. This has happened under the orders of the learned Additional Sessions Judge dated June 7, 1984. The State has come in appeal against the orders of acquittal for the offence punishable under section 302 IPC.

2. Placing reliance upon the Supreme Court pronouncement in the case of Virsa Singh, Appellant Vs. State of Punjab, Respondent (AIR 1958 SC 465) and the Gujarat High Court pronouncement in the case of Koli Kababhai Ukabhai Vs. State of Gujarat (37(1) GLR 342) and the Rajasthan High Court pronouncement in the case of Issaq Mohammed Vs. State of Rajasthan (1988 Cri. L.J. 537), learned counsel Mr. K.C. Shah urges that the conviction ought to have been for the offence punishable under section 302 IPC because the case would fall within the purview of section 300 clause "thirdly" IPC. The contention coming from the learned counsel Mr. Sheth is that regard being had to the medical evidence on record the learned trial Judge was perfectly justified in coming to the conclusion that the case is taken out of the purview of section 302 IPC because it does not fall within section 300 clause "thirdly" IPC.

3. The abovesaid contentions come in the background of the orders of conviction and sentence indicated by us earlier. The respondent-accused was put on trial for the alleged commission of the offences punishable under section 302 IPC and under section 135 of the Bombay Police Act, 1949 on the accusation that he, on September 26, 1983 at about 7 pm at village Vadvera under the Banaskantha District, had darted an arrow towards the deceased Odha Badha Garasiya and had caused him grave injuries as a result of which later on he had died during the course of the treatment. It was alleged that the respondent accused was holding the weapon viz. the bow and arrow in violation of a notification under the Bombay Police Act, 1949 and therefore he has committed the offence punishable under section 135 of the said enactment.

4. The Court below has come to the conclusion that the evidence was sufficient enough and also trustworthy enough to come to the conclusion that the respondent-accused was the author of the injury. Anyhow,

the court below was of the opinion that the case would fall within the purview of section 304 Part I IPC. This is the issue in debate before us.

5. It would be appropriate if the medical evidence on record is scrutinised with a view to answer the issue which is being raised before us.

6. Before we proceed to refer to the medical evidence on record in detail, it would be appropriate to notice that the case of the prosecution was of one injury only which could have been caused by the darting of a single arrow. This was precisely the charge on which the respondent-accused was put to trial.

7. Dr. N.R. Patel who was working as the Medical Officer at Danta has been examined as PW No.2 (Exh.7). He has stated that the injured was brought to him at about 11 p.m. on September 26, 1983, and on examination he had found two injuries on the abdomen. According to Dr. Patel, the arrow was in situ when the victim came to be examined by him. Anyhow when the certificate issued by Dr. Patel is referred, it becomes clear that the certificate does not specify or certify two injuries. On the contrary the certificate speaks of only one stab wound with the arrow inside wound. It should be appreciated that Dr. Patel does not say that any of the abovesaid two injuries or the injury no.2 which had ultimately proved to be fatal was sufficient in ordinary course of nature to cause the death of the deceased.

8. Dr. H.M. Kela, PW No.1 (Exh.6) was working as the Medical Expert at Civil Hospital, Ahmedabad at the relevant time and he had examined the injured and had seen two injuries on his person. According to Dr. Kela, the arrow was in situ and there was one another injury also which could be described as a stab wound. According to Dr. Kela, both the injuries were on the abdomen. Dr. Kela says that the patient came to be referred to him at about 7 a.m., but ultimately the operation could be commenced only at about 9.10 a.m. During the cross-examination Dr. Kela has shown his inability to say as to whether both the injuries on the abdomen could have been caused by the very same weapon or by the similar weapons. Anyhow, it should be appreciated by us that Dr. Kela also does not say that any of the abovesaid injuries or particularly the injury which had the arrow in situ was sufficient in ordinary course of nature to cause the death of the deceased.

9. Lastly the concentration should be upon the

testimony of Dr. P.K. Shah, PW No.1 (Exh.35) who while working as a tutor in the Forensic Medicine Department of B.J. Medical College, Ahmedabad had performed the autopsy on the dead body of the deceased. The evidence of Dr. Shah would go to show that the arrow had penetrated deep in the abdominal cavity and had injured the inferior vena cava, the pancreas and the aorta. Dr. Shah also says that the injury which came to be caused by the arrow was sufficient to cause death in ordinary course of nature. Therefore it is eloquently clear that the say regarding the nature of the injury viz. it being sufficient to cause death in ordinary course of nature comes on the record for the first time when the autopsy surgeon came to be examined. In other words, the treating doctors have not said anything regarding the nature of the said injury.

10. The court below was of the opinion that merely because the internal organs came to be injured by the arrow, the case would not fall within the purview of section 302 IPC, but would fall within the purview of section 304 Part I IPC.

11. The contention in this respect coming from the learned government counsel is that the court below was at a manifest error in coming to this conclusion because when the respondent-accused had darted an arrow on the abdomen of the victim who later on died during the course of the treatment at Ahmedabad can he be imputed with the intention of causing death of the deceased. We are not in a position to agree with the learned government counsel in this respect regard being had to the medical evidence indicated by us hereinabove. The treating doctors have not said that the injury by the arrow which had proved to be fatal was sufficient to cause death in ordinary cause of nature. Moreover, though the treating doctors were saying in respect of two injuries on abdomen, the certificate issued by them and the Yadi sent by them speak of only one injury. The medical evidence, therefore, in our opinion, is not consistent. When the treating doctors had maintained a complete silence regarding the nature of the injury which ultimately proved to be fatal, we are not in a position to subscribe to the view that the abovesaid injury was sufficient in the ordinary course of nature to cause death. Moreover, it should not escape our notice that the deceased was firstly taken in the injured condition to Radhanpur hospital and the operation could not be performed there because the necessary arrangement for blood transfusion could not be made at Radhanpur. He came to Civil Hospital, Ahmedabad on the next day morning at about 7.10

a.m. and the operation could commence only after 10 a.m. It is the clear evidence of Dr. Shah that there was a profused bleeding or hemorrhage during the operation and therefore the deceased succumbed to the injuries on the operation table. This evidence also preclude us from coming to the conclusion that the said injury which proved fatal later on was sufficient in the ordinary course of nature to cause death.

12. We have, while commencing the writing of the present orders mentioned that reliance is being placed by the learned government counsel Mr. K.C. Shah on the Supreme court pronouncement in the case of Vira Singh, Appellant (supra). The Supreme Court pronouncement says:

> "The prosecution must prove the following facts before it can bring a case under section 300 "thirdly"; First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended."

The facts before the Supreme Court was that the death was caused by a spear which was thrust into the abdomen of the deceased with such a force that it penetrated the bowels and three coils of the intenstines came out of the wound and that digested food oozed out from cuts in three places. The Supreme Court pronouncement says that it has to be proved that the injury was not accidental or unintentional and that it would be required to be ruled out that some other kind of injury was intended.

13. The aforesaid decision of the Supreme court has been relied upon in a pronouncement of this court in the case of Koli Kababhai Ukabhai (supra). It was a case of a single blow by the accused with a spear on the chest of the deceased. The circumstances had showed that there was pre-meditation for this act. It is in view of this evidence on record that this court has taken the view that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death.

14. The Rajasthan High Court decision in the case of Issaq Mohammed and another (supra), when referred, makes

it clear that in that case there was absolutely no altercation between the deceased and the accused and there was no sudden quarrel between them. The blow was given on the most vulnerable part of the body viz. chest by Gupti which is regarded as a formidable weapon which can be easily wielded with the deadly results.

15. In our opinion, the said three decisions being pressed into service by learned government counsel Mr. K.C. Shah would not be able to render any assistance to him in his submissions before us regard being had to the medical evidence on record to which we have made a detailed reference. It cannot be said that the respondent-accused intended to cause that injury which would ultimately land on that part of the belly, which in turn would allow the arrow to pierce the mesentery, inferior vena cava and aorta. The treating doctors were not able to say that the abovesaid injury was likely to cause death in ordinary course of nature. All what the evidence would go to show is that the accused who was suspecting the hand of the deceased in eloping of the former's wife had darted an arrow on the person of the deceased and that also on the abdomen. The medical evidence on the record is not sufficient enough to lead us to the conclusion that the respondent-accused wanted or intended to cause that injury which would ultimately pierce, cut or damage the abovesaid internal organs of the body.

16. Therefore, in our view, the learned Trial Judge was perfectly justified in coming to the conclusion that the case would not fall within the purview of section 302 IPC. The present appeal, therefore, in our opinion requires to be dismissed. The same is hereby accordingly dismissed. Bail bond, if any, shall stand cancelled.

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